IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO: 1129 of 2005

Between:

P. Suryachandrarao, S/o Late Samba Murthy,
Assistant Grade 2 (Depot) C/o 31-23-35, Ramalayam Street, Kurmannapalem,
Vadlapudi-PO, Visakhapatnam-530046.

... PETITIONER

AND

1 Food Corporation of India, rep. by its Manager (P & IR),
Head Quarters, 16-20, Barakhamba Lane, New Delhi.
2 Food Corporation of India, rep. by its Zonal Manager, Zonal

Office, Chennai - 600 006.
3 Food Corporation of India, rep. by its Senior Regional

Manager, Regional Office, Hyderabad - 500004.
4 Food Corporation of India, rep. by its District Manager,

District Office, Visakhapatnam.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or a Writ one in the nature of Mandamus declaring (i) the Order No. 14/5/2004/PERS dt,. 20-7-2004 of the 2nd respondent as illegal, arbitrary (ii) Clause VIII (d) of the VR Scheme dt. 29-6-2004 of the 1st respondent is Ultravires and contrary to the settled principles laid down by the Supreme Court and by Setting Aside the Order dt. 20-7-2004 of the 2nd respondent consequently direct the respondents to allow the Petitioner to continue in service as Assistant Grade 2 (Depot) before the 4th respondent.

Counsel for the Petitioner: MR.A.SRINIVASA SARMA (Not Present)

Counsel for the Respondents: MR.B.ANJANEYULU

The Court at the admission stage made the following:

ORDER:

This writ petition is filed seeking a writ of *Mandamus* declaring the order No.14/5/2004/PERS, dated 20.07.2004 of the second respondent as illegal and arbitrary.

2. None appeared for the petitioner. Heard learned Standing Counsel for the respondents.

3. Learned counsel for the respondents contended that having accepted the benefit under the Voluntary Retirement Scheme (V.R.S), the petitioner cannot be permitted to approbate and reprobate. Therefore, the writ petition is devoid of merits.

4. In pursuance of the scheme under Circular No.EP-01-2004-16, dated 29.6.2004, petitioner opted for voluntary retirement on 07.07.2004. But, immediately thereafter, on 15.07.2004, he addressed a representation to the fourth respondent with information that he was withdrawing the option of voluntary retirement, which was forwarded by the 4th respondent to the third respondent. The third respondent without reference to the forwarding letter dated 17.07.2004 of the 4th respondent under which petitioner's letter dated 15.07.2004 has been enclosed, passed order dated 20.07.2004 accepting the voluntary retirement of the petitioner with effect from 02.08.2004, and as such, petitioner was relived from service with effect from 02.08.2004. Challenging the same, the present writ petition is filed.

5. Learned counsel for the respondents placed reliance on **Punjab National Bank Vs. Virender Kumar Goel and others**, wherein it is held:

> " As noticed in our judgment, having accepted the benefit under the Scheme by withdrawal and utilization thereof, they are not permitted to approbate and reprobate".

6. As seen from the proceedings, the District Manager of the respondent Corporation addressed to the Senior Regional Manager on 17.07.2004 making it clear that the writ petitioner has given an option to exercise V.R.S, but after consulting his family members, he turned up his mind to withdraw V.R.S option dated 07.07.2004. Before the same is reached to the competent authority, i.e., the Senior Regional Manager, the order dated 20.07.2004 has been passed accepting the application of the writ petitioner made on 07.07.2004. Therefore, he was ordered to be relieved with effect from 02.08.2004. There is no material filed at this stage to show that the order is passed after receipt of the proceedings of the District Manager dated 17.07.2004. In pursuance of the order dated 20.07.2004, the petitioner was relieved from duties on 02.08.2004 and thereafter, he received all the benefits under V.R.S from 06.09.2004 to 27.01.2005. Having accepted all the benefits, the writ petition is filed in the month of January, 2005 challenging the very scheme itself.

7. Therefore, the writ petition is devoid of merits and it is accordingly dismissed. No costs.

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K.C.BHANU, J

Dated: 04.04.2005

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To

1 The Manager (P & IR),Food Corporation of India,
Head Quarters, 16-20, Barakhamba Lane, New Delhi.
2 The Zonal Manager, Food Corporation of India, Zonal

Office, Chennai - 600 006.
3 The Senior Regional Manager, Food Corporation of India,

Regional Office, Hyderabad - 500004.
4 The District Manager, Food Corporation of India, District

Office, Visakhapatnam.

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